IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

OP.No. 23995 of 2001(F)

PETITIONERS:

1. DHEERU J ARACKAL, S/O.LATE JANARDHANA PANICKER, AGED 22, NOW RESIDING AT THOPPIL HOUSE, EROOR SOUTH P.O., TRIPUNITHURA, ERNAKULAM DIST.

2. MINOR DEEPU J ARACKAL, S/0. LATE JANARDHANA PANICKER, AGED 17, RESIDING AT DO. DO., REP. BY HIS GUARDIAN AND BROTHER DHEERU J ARACKAL, 1ST PETITIONER.

BY ADV. SRI.T.B.THANKAPPAN
SMT.K.DEEPA

RESPONDENTS:

1. THE COMMISSIONER OF EXCISE, KOTTAYAM.

2. CIRCLE INSPECTOR OF POLICE, EXCISE ENFORCEMENT AND ANTINARCOTIC SPECIAL SQUARD, KOTTAYAM.

3. THE ACCOUNTANT GENERAL, OFFICE OF ACCOUNTANT GENERAL (C & E) KERALA, KOZIKODE.

4. THE ACCOUNTANT GENERAL, KERALA, THIRUVANANTHAPURAM.

5. STATE OF KERALA, REP. BY CHIEF SECRETARY TO GOVERNMENT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BASANT BALAJI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 DEATH CERTIFICATE OF DECEASED JANARDHANA PANICKER DT. 18-7-2000.

EXT.P2 DEATH CERTIFICAE OF DECEASED SARADA D. 16-8-2000.

EXT.P3 CERTIFICATE ISSUED BY TAHSILDAR DT. 22-1-2001.

EXT.P4 MEMO DT. 4-4-2000.

EXT.P5 REPRESENTATION DT. 8-8-2000.

[TRUE COPY]

P.S. TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 23995 of 2001

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Dated this, the 14th December, 2006.

J U D G M E N T

Petitioners are sons of late Janardhana Panicker who was employed in the Excise Department of the Government of Kerala as an Inspector. He died on 11-7-2000. At the time of his death, his parents, his wife and two petitioners were alive, out of whom the 1st petitioner was a major. As per the law of succession, only the widow, children and the mother of the deceased are entitled to succeed to the estate of the deceased he having been a Hindu in accordance with the Hindu Succession Act. However, the petitioners apprehended that the terminal benefits due to their late father are likely to be paid to his parents alone. In the meanwhile, the widow, namely, the mother of the petitioners also died. The petitioners' contention is that on the death of their mother, the service benefits due to the legal heirs on the death of their father should go in equal shares to the widow, the two children and the mother of the deceased. Since on the death of the widow, her share also devolved on the petitioners, they are entitled to ¾ share of the terminal benefits due to their deceased father, is the contention put forward in this original petition. In the above circumstances, they have filed this original petition seeking the following reliefs:

> "i) Issue a writ in the nature of mandamus or other appropriate writ, order or direction commanding the respondents to disburse the service benefits of deceased Janardhana Panicker to the petitioners and their paternal grandmother with 3/4th shares and 1/4th share respectively and not to any other person in violation of Section 8 of the Hindu Succession Act.
>
> ii) Issue a writ in the nature of mandamus commanding the respondents to disburse the 3/4th shares out of the total service benefits dude to Janardhana Panicker to the petitioners separately without any further delay."

2. In the meanwhile, the mother of deceased Janardhana Panicker also died and her husband and three children were impleaded as additional respondents 7 to 10, who have not cared to appear before this Court to contest the matter in spite of service of notice on them. Respondents 1 and 2 have filed a counter affidavit. However, while admitting the contention of the petitioners that under the Hindu Succession Act, the widow, children and mother of the deceased alone are entitled to succeed to the estate of late Janardhana Panicker, they raised a contention that in respect of General Provident Fund amount, as per Rule 32 (b)(i) of the General Provident Fund (Kerala), Rules, the sons who have attained legal majority are not entitled to share in the amounts standing to the credit of the deceased in his provident fund accounts. Therefore, they would contend that the 1st petitioner having been a major at the time of death of Janardhana Panicker, he cannot claim any share in the provident fund amounts standing to the credit of the deceased father. In respect of other contentions, no contention has been raised in the counter affidavit.

3. On a reading of Rule 32(b)(i) of the General Provident Fund (Kerala) Rules, I am satisfied that the 1st petitioner is not entitled to claim any share in the provident fund amount standing to the credit of his late father. However, he would certainly be entitled to ½ share of his mother's share in that amount since his mother died subsequent to the death of his father. In the above circumstances, the original petition is disposed of as follows.

¾th of the amounts due as terminal benefits to legal heirs of late Janardhana Panicker, other than provident fund amounts, shall be disbursed in equal shares to petitioners 1 and 2. The balance 1/4th share shall be disbursed to respondents 7 to 10. In respect of

provident fund amount, 1/3rd share shall be disbursed to respondents 7 to 10. Out of the balance 2/3rd amount, , the 1st petitioner would be entitled to ½ of his mother's share and the balance should be disbursed to the 2nd petitioner. The disbursement shall be made within two months from the date of receipt of a copy of this judgment.

Sd/- S. Siri Jagan, Judge.

Tds/

S. Siri Jagan, J.

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O.P. No. 23995 of 2001

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J U D G M E N T

14th December, 2006.